

## CNMV RECOMMENDATIONS IN VIEW OF THE POTENTIAL CESSATION OF LIBOR BY THE END OF 2021

13 de enero de 2021

The CNMV, the competent authority in Spain for the application of the regulation on benchmarks (Regulation (EU) 2016/1011), is monitoring the implementation of this regulation and promoting the knowledge and adaptation of financial institutions and other companies that use interest rate benchmarks in their financial and capital market transactions, through the dissemination of information and the clarification of doubts.

Further to the public statements released by the CNMV in [March 2018](#) and in [July 2019](#) in which it reported on the new features of European regulations and some aspects of their application process, this communication aims to report on the situation of the Libor benchmark.

Many Spanish non-financial companies, public administrations and financial institutions have entered into financing or hedging contracts referenced to the Libor index. The foreseeable disappearance of Libor according to the decisions taken by its administrator<sup>1</sup> and by the competent authorities<sup>2</sup>, makes it necessary **for financial and non-financial institutions exposed to this benchmark to assess the adoption of measures to adequately manage the transition.**

The CNMV reiterates the recommendations<sup>3</sup> contained in its public statement of July 2019:

- the advisability of monitoring on an ongoing basis the developments and activities of the working groups, as well as the major advances in the reform process;

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<sup>1</sup> The benchmark administrator is conducting a [public consultation](#) on its intention to cease the publication of the benchmark beyond the end of 2021 for all maturities available in the following currencies: euro, Swiss franc, Japanese yen and pound sterling as well as the one-week and two-month maturities for the US dollar. The publication of the remaining maturities (one day and one, three, six and twelve months) in the latter currency would be discontinued from 30 June 2023, provided that these benchmark settings continue to comply with the applicable regulations, including its representativeness.

The competent authorities of the [United Kingdom](#) and of the [USA](#) have released respective public statements on the cessation of publication of Libor as of these dates, urging entities to cease concluding new contracts using the index as soon as possible and in any case before 31 December 2021.

<sup>3</sup> In the same vein, the European Central Bank (ECB), as banking supervisor, has published good practices addressed to banks depending on the nature of their exposures.

- identification and evaluation of risks and possible impacts resulting from their exposure;
- design of a global strategy to plan the corresponding implementation steps;
- having an adequate organisational structure to coordinate the design and implementation of the transition work.

In implementing these recommendations, it is advisable to take into consideration the global transition roadmap of the Financial Stability Board (FSB)<sup>4</sup> aimed at raising awareness of the steps that financial and non-financial firms must take now and over the remaining period to the end of 2021 to successfully transition away from Libor.

The CNMV values, as do other authorities<sup>5</sup>, the protocol and supplement of ISDA (International Swaps and Derivatives Association) on fallback clauses in derivative contracts referenced to benchmarks such as Libor<sup>6</sup>. These documents facilitate the soundness of contracts to cope with the disappearance of the benchmark and, where appropriate, the adaptation to the requirements of Article 28(2) of Regulation (EU) 2016/1011. Therefore, the CNMV advises Spanish financial institutions, companies and public administrations to consider the advisability of adhering to this protocol, taking into account their particular situation and their own needs<sup>7</sup>.

Due to the existence of contracts and instruments that do not have adequate fallback provisions to deal with the disappearance of Libor and whose modification is not possible in the short period remaining until its cessation at the end of 2021, the European Union has approved a mechanism (by amending Regulation (EU) 2016/1011) that will allow the European Commission to designate a legal substitute rate<sup>8</sup> that will apply to all contracts and financial instruments that do not contain a permanently applicable substitute rate and are subject to the law of a European Union Member State<sup>9</sup>. A similar legislative solution is being considered in other jurisdictions such as the United Kingdom and the United States. However, these possible solutions may not be applicable to all financial instruments and contracts linked to LIBOR, and therefore, the CNMV recommends that financial and non-

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<sup>4</sup> FSB - [Global Transition Roadmap for LIBOR](#).

<sup>5</sup> [FSB public statement](#) on the ISDA Protocol and [public statement of the Working Group on Euro Risk-Free Rates, the European Central Bank, the European Securities Markets Authority \(ESMA\), the European Commission and the Financial Services and Markets Authority \(FSMA\)](#).

<sup>6</sup> [ISDA 2020 IBOR Fallbacks Protocol](#) and [IBOR Fallbacks Supplement](#) (Supplement number 70 to the 2006 ISDA Definitions).

<sup>7</sup> The [ISDA protocol](#) also allows for the adaptation of other framework agreements (included in the Annex to the protocol) such as the Framework Agreement for Financial Operations (CMOF) published by the Spanish Banking Association and the Spanish Confederation of Savings Banks.

<sup>8</sup> Based on the recommendations made by the specific working groups on alternative benchmarks.

<sup>9</sup> [Regulation of the European Parliament and of the Council amending Regulation \(EU\) 2016/1011 as regards the exemption of certain third country foreign exchange benchmarks and the designation of replacement benchmarks for certain benchmarks in cessation](#).

financial institutions seek, as far as possible, to reach agreements to replace LIBOR or to include robust replacement benchmarks in their financial instruments or contracts.

Finally, in relation to the cessation of the publication of the Eonia from 3 January 2022<sup>10</sup>, the CNMV reiterates the recommendations contained in the above-mentioned public statement of [July 2019](#). The CNMV will continue to disseminate information and clarify doubts on this matter<sup>11</sup>.

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<sup>10</sup> As reported by the administrator through its [website](#).

<sup>11</sup> The information is published in the [Benchmarks section of the CNMV's website](#). Enquiries can be sent through the following email: [CNMV-Benchmarks@cnmv.es](mailto:CNMV-Benchmarks@cnmv.es).